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## Reasonable rules on wiretaps

A Supreme Court ruling Monday has the effect of giving law enforcement agents more leeway to listen in on private telephone conversations, even those that have nothing to do with their investigation. That result is certainly not desirable in itself, and two of the justices took strong exception to it. We can find no fault, however, with the majority's reasoning, which is that rules have to be reasonable even when imposed on lawmen.

A 1968 law on wiretaps says that investigators must "minimize" their eavesdropping on conversations outside the scope of the surveillance. Seven justices agreed that agents who carried out a 1970 narcotics investigation did not violate the law, even though only 40 per cent of the calls they intercepted were related to narcotics. As a result of the wiretap, 22 persons in the District of Columbia were arrested, 14 were indicted, and two ultimately were convicted.

The dissenters, Justices William J. Brennan and Thurgood Marshall, protested that the majority was "eviscerating" a law meant to protect individual privacy.

In his majority opinion, Justice William H. Rehnquist argued that the conduct of law enforcement agents should be judged on the basis of known actions, not on guesswork about their motives. The mere percentage of nonpertinent calls intercepted is "not a sure guide" in deciding whether the wiretaps were properly conducted; after all, said the justice, some of those calls may have been very short, one-time-only conversations, or "ambiguous" calls involving "guarded or coded language."

In other words, it is not reasonable to expect a federal agent to know before he hears a given conversation whether it will be about narcotics. In carrying out an authorized wiretap, his actions must be judged like anyone else's: not by whether it met some standard formulated after the act, but whether it was reasonably related to what he was legally trying to do.

Indiscriminate wiretapping by government agents remains a danger to be guarded against. But the meaning of "indiscriminate" must be weighed and determined like any other word in law: carefully and sensibly.

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